

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SAM THANKACHEN
Plaintiff/Counter-Defendant

v.

Case Number: 09-13226
Honorable Denise Page Hood

STATE FARM FIRE AND CASUALTY
COMPANY,
Defendant/Counter-Plaintiff/
Third-Party Plaintiff

v.

PATRICK VANCURA,
Third-Party Defendant

**ORDER DENYING MARC GOLDMAN'S MOTION TO RE-OPEN CASE AND
MOTION TO COMPEL STATE FARM FIRE AND CASUALTY COMPANY TO
DELIVER PREMIUM REFUND ON CANCELLED POLICY AND APPLY FUNDS TO
ATTORNEY'S CHARGING LIEN**

I. INTRODUCTION

This matter is before the Court on former Plaintiff's Counsel's Motion to Re-Open Case [Docket No. 47, filed on February 18, 2011]. This matter is also before the Court on former Plaintiff's Counsel's Motion to Compel State Farm Fire and Casualty Company to Deliver Premium Refund on Cancelled Policy and Apply Funds to Attorney's Charging Lien [Docket No. 48, filed on February 18, 2011]. Defendant/Counter-Plaintiff State Farm responded on February 23, 2011.

II. STATEMENT OF FACTS

On August 10, 2010, this Court entered a default judgment against Sam Thankachen in the amount of \$300,000. This case closed on August 27, 2010, when a default judgment for the

same amount, jointly and severally was entered against the third-party defendant Patrick Vancura. Plaintiff's Counsel Marc Goldman withdrew from his representation of Plaintiff on May 4, 2010. Mr. Goldman now seeks to re-open this case, and to compel State Farm to deliver premium refund on the cancelled policy and apply the funds to the attorney's charging lien.

At the time when State Farm informed Mr. Thankachen and Mr. Vancura that the Homeowner's Policy at issue in this case was deemed void, State Farm sent a check in the amount of \$13,657.97 to Mr. Thankachen and Mr. Vancura. *See* Ex. A to Def./Counter Pl.'s Mot. to Reopen. This amount represented premiums received under the policy for coverage after the policy was declared void by State Farm. Contesting State Farm's right to cancel the policy, Mr. Goldman returned the check to State Farm on his client's behalf. Mr. Goldman now argues State Farm must return the premium to Plaintiff, and that he is entitled to a charging lien on the proceeds.

III. ANALYSIS

Mr. Goldman's motion presumes that this Court has jurisdiction over this matter. As stated above, this case was closed on August 27, 2010 when a final Default Judgment and Order of Dismissal was entered. The instant motion was filed on February 18, 2011, almost six months from the entry of the Default Judgment.

The time to file a Motion to Alter or Amend Judgment is 28 days. Fed. R. Civ. P. 59(e). A default means the party did not appear to defend the action. Fed. R. Civ. P. 55(a). A judgment means a decree or order from which an appeal lies. Fed. R. Civ. P. 54(a). The time to file an appeal in a civil case is 30 days after the judgment is entered. Fed. R. App. P. 4(a)(1)(A). An order is final if it ends the litigation on the merits and leaves nothing for the court to do but

execute the judgment. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978).

Mr. Goldman has not submitted any authority for the Court to exercise any jurisdiction over his motions, given that a default judgment has already been entered against Plaintiff Sam Thankachen and Third-Party Defendant Patrick Vancura. The default judgments are final, since the time to appeal expired. The Court cannot reach the issue of the premium funds being returned and applied to the attorney's charging lien because the Court is without authority to address the motion filed beyond 28 days from the entry of the Default Judgment. Since the Default Judgment is final, the Court has no authority to review any matters relating to the subject matter of the Default Judgment.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that the Motion to Re-Open Case [**Docket No. 47, filed on February 18, 2011**] is DENIED.

IT IS FURTHER ORDERED that Motion to Compel State Farm Fire and Casualty Company to Deliver Premium Refund on Cancelled Policy and Apply Funds to Attorney's Charging Lien [**Docket No. 48, filed on February 18, 2011**] is DENIED.

Dated: June 10, 2011

S/Denise Page Hood
DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to Sam Thankachen, 11881 NW 2nd Street, Plantation, FL 33325 the attorneys of record on this date, June 10, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160